

REMARKS

Claim 1 has been amended to clarify the subject matter regarded as the invention. Claims 1-41 are pending.

Specification

The Specification has been amended to correct typographical/clerical errors. No new matter has been added.

Claim Rejections – 35 U.S.C. §103

The Examiner has rejected Claims 1-19, 21-22, 32-33, 35, and 37-41 under 35 U.S.C. §103(a) as being unpatentable over Konia (US 7,225,151); Claims 20 and 23-31 under 35 U.S.C. §103(a) as being unpatentable over Konia in view of Seshadri (“Multiple Source Procurement Competitions”); and Claims 34 and 36 under 35 U.S.C. §103(a) as being unpatentable over Konia in view of Bezos (US 6,606,608). The rejections are respectfully traversed.

Regarding independent Claims 1, 32, 37, 40, and 41: In Amendment D, Applicants amended each of the independent claims to recite (in part) that a first “allocation amount” and a second “allocation amount,” allocated prior to the conducting of an auction (or an auction round), “are different.”

In the 4-28-09 Office Action, the Examiner made the following statement:

“Re claims 1, 32-33, 35, 37-41: Konia teaches a method comprising ... wherein the allocation associated with each of the highest ranked bidders at the conclusion of the auction round is dependent upon the rank of each of the plurality of highest ranked bidders at the conclusion of the auction round; and wherein at least a first allocation associated with a first bidder and a second allocation associated with a second bidder are different.”

The Examiner stated that the above limitations could be found in the following: “(see at least col. 1, lines 55-60, col. 6, lines 3-18, 33-38, col. 7, lines 66 through col. 8, line 12).”

However, the Examiner then went on to make the following statement:

“Konia does not explicitly teach allocation amount. However, it would have been obvious to one of ordinary skills in the art at the time of the invention to modify Konia's allocation to represent amount (i.e. volume or quantity) or quality such that bidders are at least aware of the allocations or awards prior to the conduct of auction based on relative rankings. For example first ranked bidder is allocated premium tee off time of 9:00 am Saturday morning while other ranked bidders are allocated time slots as close to the premium time slot as possible for each particular bid (col. 6, lines 9-17).”

The Examiner appears to be making two contradictory statements:

1. That the Konia reference discloses that “a first allocation amount associated with a first bidder and a second allocation amount associated with a second bidder” are different. (Somewhere in the citation “col. 1, lines 55-60, col. 6, lines 3-18, 33-38, col. 7, lines 66 through col. 8, line 12.”) And, thus, that Konia discloses a) a first allocation amount; b) a second allocation amount; and c) that the two allocation amounts are different.
2. That the Konia reference **does not** teach an allocation amount. And, thus, that Konia **does not** disclose a) a first allocation amount; b) a second allocation amount; and c) that the two allocation amounts are different.

Further, it appears by the Examiner's statement (“However, it would have been obvious to one of ordinary skills in the art at the time of the invention to modify Konia's allocation to represent amount (i.e. volume or quantity) or quality such that bidders are at least aware of the allocations or awards prior to the conduct of auction based on relative rankings.”), that the Examiner is possibly making an attempt to officially notice a fact.

If the Examiner has indeed intended to take Official Notice, such an attempt is traversed, at least because it is not in compliance with the Office's own procedures. Proper use of Official Notice requires compliance with several obligations expressly set forth in the Manual of Patent Examining Procedure, which the Examiner has failed to meet. For example, Official Notice is

permissible only for certain types of facts – those that are capable of “instant and unquestionable demonstration” as being well-known. (MPEP § 2144.03(A)). Naked assertions about what is allegedly known in the art, like those made at page 3 of the Office Action, cannot satisfy these requirements. Further, as the Examiner has not used the term, “Official Notice,” Applicants are uncertain as to whether Examiner intends to officially notice a fact or not, and if so, of what fact the Examiner is officially noticing.

Accordingly, Applicants respectfully request the Examiner respond by either explicitly stating that the Examiner is not attempting to take Official Notice of a fact (and indicating that Claims 1, 32, 37, 40, and 41 are allowable), or by providing meaningful evidence of the specific fact that the Examiner is noticing, as well as the support thereof, so that the Applicants may respond appropriately.

As the Examiner has not made a prima facie rejection of independent Claims 1, 32, 37, 40, or 41 under 103(a), those claims are believed to be allowable.

Regarding dependent Claims 2-31, 33-36, and 38-39: As Applicants believe independent Claims 1, 32, 37, 40, and 41 are allowable, Applicants therefore also believe the foregoing dependent claims are allowable.

Further, regarding dependent Claims 26-30: The Examiner has stated that Seshadri discloses the limitations of each of these Claims on Page 4, paragraphs 3-7. If the Examiner does not allow Claims 26-30 as a result of the present response, Applicants respectfully request that Examiner provide a more detailed explanation of where the elements of each claim are to be found within Seshadri. For example, Applicants are unable to find any mention in Seshadri of a “non-zero allocation amount” being “expressed as a percent of a total award” (Claim 26); an “allocation amount” being “a range of amounts” (Claim 30); etc.

The foregoing amendments are not to be taken as an admission of unpatentability of any of the claims prior to the amendments.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

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